

**Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals)  
Amendment Bill 2023**

**Submission No:** 3  
**Submitted by:** Queensland Council for Civil Liberties  
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**Submitter Comments:**



The Secretary  
Legal Affairs and Community Safety Committee

**By Email: [lacs@parliament.qld.gov.au](mailto:lacs@parliament.qld.gov.au)**

Dear Sir/Madam

**Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Bill 2023**

Please accept this submission on the above Bill.

**About the QCCL**

The QCCL is a voluntary organisation established in 1967 to promote civil liberties.

**Double Jeopardy**

This legislation is the third in a series of carve outs from the rule against double jeopardy. We oppose these changes, as we did the others.

The rule against double jeopardy is a feature of one of the fundamental principles of our legal system, that is, of finality.

The rule against double jeopardy is not a rule designed to protect the guilty but to protect the innocent.

Every change to this rule undermines the principled asymmetry which is at the heart of the criminal justice system. That principle reflects the proposition that the State with all its resources and powers should not be allowed to make repeated attempts to convict an individual of an alleged offence.

The state has many advantages over the Defendant in a criminal trial including greater resources and powers to conduct investigations.

The prosecution in a criminal offence starts from the advantage that many jurors will say "If there was nothing in this case the police would never have brought it."

The criminal justice system rectifies those imbalances by the presumption of innocence and placing the burden on the prosecution to prove an offence beyond reasonable doubt. In addition, this attempt to correct the imbalance is supported by the rule against double jeopardy.

Whereas once an acquitted person could leave the court room with the prospect of rebuilding their life that is no longer the case for this range of offences. The prospect of their being charged again will hang over their head for evermore.

No doubt if these laws are going to exist amendments such as that to s 687D are welcome. This will ameliorate against the risk of the police, knowing these laws exist, adopting a less than thoroughly rigorous approach to investigations.



It may be asked, is there any evidence that these laws have resulted in wrongful convictions to date? We are not aware of any evidence to support such a claim. However, we would point to the statistics which put the rate of wrongful convictions at between .1 percent and 5 percent<sup>1</sup>. Based on these studies there are currently between 10 and 500 people in Queensland prisons who should not be there. As time passes these laws will inevitably increase that number, especially if, as we expect based on experience to date will happen, the exceptions are increased over time

Wrongful acquittals are quite different from wrongful convictions as they do not involve the unconscionable incarceration of an innocent.

### **Miscarriage of Justice**


The provisions providing for a subsequent right of appeal against conviction on the grounds that there is fresh and compelling evidence or new and compelling evidence are welcome.

However, it is the Council's submission that the government ought, if it is concerned with miscarriages in the justice system, to introduce a miscarriage of justice unit (or a Criminal Cases Review Commission as it is known in the United Kingdom) as previously recommended by the Fitzgerald inquiry to deal with the many people who are detained in our criminal justice system even though they are innocent. As we have previously noted, it is far more morally reprehensible to detain a person knowing that they are innocent or having good reasons to suspect they are innocent than to acquit a guilty person.

We are aware that there are concerns about the expense of such a Commission. To address that, we would suggest that the Attorney-General should take a proposal to the Standing Committee of Attorneys General to establish a national Criminal Cases Review Commission.

We trust this is of assistance to you in your deliberations.

Yours Faithfully

  
Michael Cope  
President  
For and on behalf of the  
Queensland Council for Civil Liberties  
18 December 2023

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<sup>1</sup> Hoel A 2008. Compensation for wrongful conviction. Trends & issues in crime and criminal justice no. 356. Canberra: Australian Institute of Criminology.  
<https://www.aic.gov.au/publications/tandi/tandi356>